

In December 2001, Vic filed a motion to determine arrearages, asserting that the whereabouts of his daughter had been concealed from him until after she had turned 18. Following a hearing, the Stanislaus County trial court agreed that April had concealed Brandi's whereabouts until after the girl turned 18. The court found that this concealment precluded April from collecting child-support arrearages for the period from 1986 to March 30, 1998, and relieved Vic from his obligation to pay.

The DCSS appealed, but the Fifth District affirmed.

### Still a schoolgirl . . .

The department argued that because Brandi had not yet graduated from high school when her mother revealed where she was, the concealment was not a viable defense to Vic's obligation. The DCSS pointed out that Fam C §3901(a) provides that a parent's duty of support for an unmarried child continues until the child turns 18, or, if still a full-time student, until he or she completes the 12th grade or reaches age 19, whichever comes first. As the DCSS saw it, Vic was reunited with his daughter while he still had a statutory obligation to support her, so the obligation was ongoing; besides, Brandi could still benefit from receiving the payments. The panel disagreed.

### Hide the child, hide the money . . .

The justices reasoned that, per *In re Marriage of Damico* (1994) 7 C4th 673, 29 CR2d 787, 872 P2d 126, 1994 CFLR 6247, FIRST ALERT #F-94-649, a custodial parent's concealment of a child until the child reaches the age of majority estops that parent from collecting child-support arrearages that accrued during the period of concealment. The Supremes, they recalled, had reasoned that it is unfair to enforce a judgment against a person who has no way to pay the hidden parent or to seek help from the trial court against the concealment. However, the panel noted, the high court hadn't decided the question of what happens in situations where the concealment ends before the child reaches majority or the recipient-parent was receiving aid payments. Those questions were answered, the justices here explained, in *In re Marriage of Comer* (1996) 14 C4th 504, 59 CR2d 155, 927 P2d 265, 1997 CFLR 7381, FIRST ALERT #F-96-782, in which the Supremes held that concealment is not a defense when it ends before the child reaches majority, and it does not estop a county from collecting aid arrearages. The question that this panel had to answer was whether the fact that Brandi was still in high school when the concealment ended meant that the concealment was not a defense to collecting arrearages.

### Age, not activity . . .

The justices noted that in *Damico* (the case that was applicable here) and in *Comer*, the Supremes had "specified concealment until the 'age of majority' as the benchmark for the estoppel defense." Thus, it was the child's reaching age 18, not the termination of the obligor's child-support obligation, that determined when the concealment defense would apply. Here, Brandi's whereabouts were not revealed until after she turned 18. And although Vic had tried to find her before that, he had been stymied by the concealment efforts of April and her family; he'd called to no avail, he couldn't afford to hire an investigator, and he was unaware of the parent locator service. In light of all that, the justices concluded, the trial court had not erred in relieving Vic from his child-support obligation during the period of concealment.



### Comment . . .

Most of the concealment cases that we've seen recently have distinguished *Damico* rather than following it. In fact, some family law attorneys speculated that *Damico* was simply an odd little case that stood by itself and wouldn't be followed in the future. *Jensen* shows us that we shouldn't write-off *Damico* just yet, even if most recent cases showed more of an inclination to follow *Comer*. Some may wonder why the result in this case isn't the same as that in *In re Marriage of Walters* (1997) 59 CA4th 998, 70 CR2d 354, 1998 CFLR 7831, FIRST ALERT #F-97-833, where the court held that concealment until majority didn't estop the custodial parent from collecting arrearages or bar the county from collecting AFDC reimbursement. However, *Walters* is factually distinguishable from *Jensen*. In that case, Milton Walters's ex-wife and his daughter moved without leaving a forwarding address, but surfaced later in Palmdale. Milton went there to look for them, but failed to contact school authorities or children's services, and did not search voter or DMV records. When he asked a clerk at the DA's office for their address, the clerk refused to give it out. However, unlike Vic Jensen, who had been told by the county not to pay support after April left, Milton had a court order that directed him to pay child support to the DA's office. Since Milton had a place to make his payments, it's not hard to see why the court would require him to continue to do so. Vic, on the other hand, really had no place to send his payments. Moreover, once his support order was registered, he paid what he owed in full. (An interesting question is how he'll get the money back that the court has decided he didn't owe.)